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No. 85-1525

In The

Supreme Court of the United States

October Term, 1985

CHARLES EDWARD HARTMAN,

Petitioner,

vs.

STATE OF TENNESSEE,

Respondent.

On Writ of Certiorari to the Supreme Court of Tennessee

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

W. J. Michael Cody
Attorney General and Reporter
Counsel of Record

Kymberly Lynn Anne Hattaway
Assistant Attorney General

450 James Robertson Parkway
Nashville, Tennessee 37219-5025
(615) 741-3487

Counsel for Petitioner

COCKLE LAW BRIEF PRINTING CO., (800) 835-7427 Ext. 333

QUESTIONS PRESENTED FOR REVIEW

1. Whether the petitioner's death sentence is constitutionally infirm where the trial court excluded additional proof allegedly tending to establish the petitioner's innocence at the punishment phase of the trial?

2. Whether the petitioner's death sentence is constitutionally infirm where the trial court did not charge as a mitigating circumstance the petitioner's alleged lack of a significant history of prior criminal activity?

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OPINIONS BELOW

The published opinion of the Supreme Court of Tennessee was released on October 28, 1985, and appears at 699 S.W.2d 538. The opinion of the Supreme Court of Tennessee denying the petitioner's petition to rehear was released on January 13, 1986, and has been designated for publication.

JURISDICTION

The opinion of the Supreme Court of Tennessee denying the petitioner's petition to rehear was released on January 13, 1986. The instant petition was filed within sixty (60) days of that date.

The petitioner seeks to invoke this Court's jurisdiction under 28 U.S.C. § 1257.

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STATEMENT OF THE CASE

On May 21, 1983, the petitioner was convicted in the Montgomery County Criminal Court of felony murder. The jury assessed punishment at death by electrocution on May 23, 1983.

On October 28, 1985, the Supreme Court of Tennessee affirmed the judgment of the trial court. *State v. Hartman,* 699 S.W.2d 538 (Tenn. 1985). The Supreme Court of Tennessee subsequently denied the petitioner's petition to rehear on January 13, 1986.

The execution of the petitioner's sentence of death has been stayed by the Supreme Court of Tennessee pending review of the instant petition.

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REASONS FOR DENYING THE WRIT

The respondent submits that the Supreme Court of Tennessee correctly affirmed the judgment of the trial court. The Supreme Court of Tennessee did not decide a federal question of substance not heretofore determined

by this Court or decide such a question in a way not in accord with the applicable decisions of this Court; nor did the Supreme Court of Tennessee decide a federal question in a way in conflict with another court of last resort. *See* Supreme Court Rule 17.1.

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ARGUMENT

1. THE DEATH SENTENCE WAS CONSTITUTIONALLY IMPOSED UPON THE PETITIONER WHERE THE TRIAL COURT EXCLUDED ADDITIONAL PROOF ALLEGEDLY TENDING TO ESTABLISH THE PETITIONER'S INNOCENCE AT THE PUNISHMENT PHASE OF THE TRIAL.

The petitioner contends that his sentence of death was unconstitutionally imposed where the trial court excluded at the punishment phase of the trial additional proof which allegedly tended to establish his innocence. According to the petitioner, the contested evidence was relevant to show the circumstances of the offense. The respondent submits that the trial court acted properly in excluding such evidence.

In *Jurek v. Texas*, 428 U.S. 262, 276 (1976), this Court stressed the crucial importance of an informed decision-making body charged with determining whether a sentence of life or death should be imposed in a capital punishment case and opined that "[w]hat is essential is that the jury have before it all possible *relevant* information about the individual defendant whose fate it must determine." [Emphasis supplied]. *See also Eddings v. Okla-*

homa, 455 U.S. 104, 113-114 (1981); *Lockett v. Ohio,* 438 U.S. 586, 605 n. 12 (1978).

Tennessee's death penalty statute, Tennessee Code Annotated Section 39-2-203(c), sets forth standards for the admission of evidence at the punishment phase of a capital trial:

> In the sentencing procedure, *evidence may be presented as to any matter that the court deems relevant to the punishment* and may include, but not be limited to, the nature and circumstances of the crime; the defendant's character, background history, and physical condition; any evidence tending to establish or rebut the aggravating circumstances enumerated in subsection (i) below; and any evidence tending to establish or rebut any mitigating factors. Any such evidence which the court deems to have probative value on the issue of punishment may be received regardless of its admissibility under the rules of evidence, provided that the defendant is accorded a fair opportunity to rebut any hearsay statements so admitted. . . . [Emphasis supplied].

By permitting the admission into evidence of "any matter that the court deems relevant to the punishment," the subject statute clearly comports with due process requirements.

The respondent further submits that the trial court did not err in determining that additional proof allegedly tending to establish the petitioner's innocence was not relevant to the question of whether the petitioner merited a life or death sentence. With the jury having determined beyond a reasonable doubt that the petitioner was guilty of felony murder, additional proof of innocence would have no bearing on the appropriate sentence to impose

upon the petitioner. Accordingly, this issue does not warrant the granting of certiorari.

2. THE DEATH SENTENCE WAS CONSTITUTIONALLY IMPOSED UPON THE PETITIONER WHERE THE TRIAL COURT DID NOT CHARGE AS A MITIGATING CIRCUMSTANCE THE PETITIONER'S ALLEGED LACK OF A SIGNIFICANT HISTORY OF PRIOR CRIMINAL ACTIVITY.

The petitioner contends that his sentence of death is constitutionally infirm where the trial court did not charge as a mitigating circumstance his alleged lack of a significant history of prior criminal activity. The respondent submits that the trial court acted properly in not charging an unsupported statutory mitigating circumstance.

Under the subject statute, Tennessee Code Annotated Section 39-2-203(e), the trial court is required to instruct only on those mitigating circumstances, if any, which are raised by the proof:

> After closing arguments in the sentencing hearing, the trial court shall include in his instructions for the jury to weigh and consider *any mitigating circumstances* and any of the statutory aggravating circumstances set forth in subsection (i) of this section *which may be raised by the evidence at either the guilty or sentencing hearing, or both.* . . . [Emphasis supplied].

In the instant case, proof of the petitioner's entire history of prior criminal activity was not presented before the jury. With no evidence to support the charge specifically enumerated in Tennessee Code Annotated Section 39-2-203(j)(7) as a mitigating circumstance, the

respondent submits that the trial court's charge properly omitted this unsupported statutory mitigating circumstance.

Given that this Court has never held that due process requires the sentencing body to be informed of a statutory mitigating circumstance which is not supported by the proof presented at trial, the respondent submits that this issue does not warrant the granting of certiorari.

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CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

W. J. Michael Cody
Attorney General and Reporter
Counsel of Record

Kymberly Lynn Anne Hattaway
Assistant Attorney General

450 James Robertson Parkway
Nashville, Tennessee 37219-5025
(615) 741-3487

Counsel for Petitioner